123-182

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1887.**

No. 959.

FELIX A. MATHEWS, APPELLANT,

*vs.*

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 15, 1887.

ing them testify, and the juror shall say on oath that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that such juror is impartial and will render such verdict, may, in its discretion, admit such juror as competent to serve in such case."

Stat. Neb., 837.

GEO. HUNT,

*Attorney General, State of Illinois.*

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JUNE 16, 1887.

1 I.—*Petition. Filed March* 24, 1887.

In the Court of Claims.

FELIX A. MATHEWS
*vs.*
THE UNITED STATES. } No. 15596.

To the honorable the Court of Claims:

The claimant, Felix A. Mathews, respectfully shows to this honorable Court—

The claimant was, on the 19th day of July, in the year 1870, appointed consul of the United States at Tangier, in the Empire of Morocco, and continuously thereafter held and exercised the office until the year 1887. By section 1690 of the Revised Statutes of the United States, as well as by section 1 of an act of Congress approved June 11, 1874, chap. 275, an act of Congress approved June 4, 1878, chap. 155, and an act of Congress approved January 27, 1879, chap. 28, the salary of said consul is fixed at the sum of three thousand dollars ($3,000) a year, and the claimant regularly received
2 salary at that rate from the time of his said appointment till and including the 30th of June, 1882. Notwithstanding these provisions of law the claimant was, during the four years from the 1st day of July, in the year 1882, to the 30th day of June, in the year 1886, only paid at the rate of two thousand dollars ($2,000) a year. This deficiency in the payment of the claimant's salary was caused by the insufficiency of the appropriations made by the Congress of the United States, who only appropriated, for the period aforesaid, at the rate of two thousand dollars ($2,000) a year; but, as he is advised, the insufficiency of the appropriations so made constitutes, according to the decisions of this Court, no bar to his recovering in this Court the full compensation provided by the general and permanent law. The claimant, therefore, claims the difference between the salary at the rate of two thousand dollars ($2,000) a year, appropriated and paid to him as aforesaid, and the salary of three thousand dollars ($3,000) a year, provided by the general and permanent law. Said difference, for the aforesaid period of four years, amounts to four thousand dollars ($4,000), which amount he claims.

No action has been had on this claim in Congress or by any of the departments.

The claimant is the sole owner of this claim and the only person interested therein, and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and the claimant believes the facts as

stated in this petition to be true; and the claimant demands judgment for four thousand dollars ($4,000).

GEORGE A. KING,
*Attorney for Claimant.*

George A. King, being duly sworn, deposes and says: I am attorney for the claimant in this case. I have read the above petition, and the matters therein stated are true to the best of my knowledge and belief.

GEORGE A. KING.

Subscribed and sworn to before me this 24th day of March, 1887.
[SEAL.] JOHN RANDOLPH,
*Ass't Cl'k C. C.*

3 II.—*Traverse. Filed April* 9, 1887.

And now comes the Attorney General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And, as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
*Ass't Att'y General.*

4 III.—*Findings of Fact and Conclusion of Law. Filed May* 31, 1887.

This case having been heard before the Court of Claims, the Court, upon the evidence, finds the facts to be as follows:

I.

The claimant was, on the 9th day of July, 1870, appointed consul of the United States at Tangier, in the Empire of Morocco (Barbary States), and has ever since held and exercised that office.

II.

The compensation paid to the claimant was at the rate of $3,000 a year up to and including June 30, 1882. From and after July 1, 1882, to the present time he has been compensated at the rate of $2,000 a year only.

*Conclusion of Law.*

Upon the foregoing findings of fact the Court decides as a conclusion of law that the claimant is not entitled to recover, and his petition must be dismissed.

## IV.—*Opinion of the Court.*

RICHARDSON, *Ch. J.:*

The act of June 11, 1874, chapter 275, section 1 (Supp. Rev. Stat., 33), makes the following provisions:

The following consulates shall be divided into seven clases, to be known, respectively, as classes one, two, three, four, five, six, and seven, and the consuls at such consulates shall be entitled to compensation for their services per annum at the rates respectively specified herein, to wit:

Class one, four thousand dollars.
Class two, three thousand five hundred dollars.
Class three, three thousand dollars.
Class four, two thousand five hundred dollars.
Class five, two thousand dollars.
Class six, one thousand five hundred dollars.
Class seven, one thousand dollars.

* * * * * * *

Class III.

* * * * * * *

Barbary States—Tripoli, Tunis, Tangier.

The annual appropriation acts for the next succeeding years up to June 30, 1882, appropriated $3,000 a year for the consulate at Tangier, in Class III, and in each of those acts for the years ending June 30, 1879 and 1880 (Supp. Rev. Stat., 331; note, 332, 397; note, 399), is the following provision:

And the salaries provided in this act for the officers within named respectively shall be in full for the annual salaries thereof from and after the 1st day of July, 1878, and all laws and parts of laws in conflict with the provisions of this act are hereby repealed.

5 The appropriation acts for the years ending June 30, 1883, 1884, 1885, 1886, and 1887 placed Tangier in Class V, and appropriated $2,000 a year for each consulate in that class, thus:

Class V.—At two thousand dollars per annum.

* * * * * * *

Barbary States—Tangier.

The case does not differ materially from that of Sawyer, just decided. The provision in the appropriation acts for the years ending June 30, 1879 and 1880, that the salaries provided for in those acts should be in full for the annual salaries from and after the 1st day of July following, added nothing to the act of 1874, dividing consulates into several classes, with the distinct salaries for each class, but continuing that at Tangier in the third class, was in that respect a re-enactment of it.

But the acts for the years ending June 30, 1883, 1884, 1885, and 1886 (22 Stat. L., 128, 131, 424, 426; 23 Stat. L., 227, 230, 322, 326), appropriated for the salary of the consul at Tangier in Class V, thus transferring that consulate to a class which, by the act of 1874, as well as by the acts for the years ending June 30, 1879 and 1880,

was entitled to a salary of only $2,000 a year, which has been appropriated and paid. This transfer was so far a change of the previous law, and the appropriation was all that was required for the time claimed for in the petition while the office was held by the claimant. He has been paid that amount, and he has no cause of action.

The petition is dismissed.

V.—*Judgment of the Court.*

FELIX A. MATHEWS
*vs.* } 15596.
THE UNITED STATES.

At a Court of Claims held in the city of Washington on the 31st day of May, A. D. 1887, judgment was ordered to be entered as follows:

The Court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimant, Felix A. Mathews, be dismissed.

6 VI.—*Application of Claimant for and Allowance of an Appeal.*

FELIX A. MATHEWS
*vs.* } 15596.
THE UNITED STATES.

From the judgment rendered in the above-entitled cause on the 31st day of May, 1887, in favor of the defendants, the claimant, Felix A. Mathews, by his attorney of record, George A. King, on the second day of June, 1887, makes application for and gives notice of an appeal to the Supreme Court of the United States.

GEORGE A. KING,
*Att'y for Claimant.*

Filed June 2, 1887.

And now, to wit, June 2, 1887, it is ordered by the Court that the appeal be allowed as prayed for.

WILLIAM A. RICHARDSON,
*Chief Justice.*

7 In the Court of Claims.

FELIX A. MATHEWS
*vs.* } 15596.
THE UNITED STATES.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the Court and the conclusion of law thereon, of the opinion of the Court, of the final judgment of the Court dismissing the petition, of the ap-

plication of claimant for allowance of appeal to the Supreme Court of the United States, and of the allowance of said appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims, at Washington city, on the 15th day of June, 1887.

[Seal Court of Claims.]

JOHN RANDOLPH,
*Ass't Clerk C't of Claims.*

Endorsed on cover: Court of Claims. No. 959. Felix A. Mathews, appellant, *vs.* The United States. Filed June 15, 1887.

123-182

Office Supreme Court U. S.
FILED.
JUL 15 1887
JAMES. H. McKENNEY.
CLERK.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1887.

*No. 959.*

## FELIX A. MATHEWS, Appellant,

*vs.*

## THE UNITED STATES.

## *BRIEF FOR APPELLANT.*

GEORGE A. KING,
*Attorney for Appellant.*

DIBSON BROS. PRS. WASH.

# In the Supreme Court of the United States.

OCTOBER TERM, 1887.

FELIX A. MATHEWS, APPELLANT,
*v.*
THE UNITED STATES.
*No.* 959.

*Brief for Appellant.*

## I.

### STATEMENT OF THE CASE.

From July 9, 1870, until March 24, 1887, the claimant, Felix A. Mathews, held the office of consul of the United States at Tangier, in the Barbary States. At the time he entered upon the discharge of his duties it was provided by statute as follows: "That consuls-general, consuls, and commercial agents, appointed to the ports and places hereinafter specified in Schedules B and C, shall be entitled to compensation for their services, respectively, at the rates per annum hereinafter specified in said Schedules B and C. * * * Schedule B. * * * II.—Consuls. * * * Barbary States.—Tangiers, Tripoli, and Tunis, each three thousand dollars." 11 Stat. L. 52–54, "An act to regulate the Diplomatic and Consular Systems of the United States," approved August 18, 1856,

Secs. 2, 3. The same provision as to salary was carried into the Revised Statutes, section 1690. The sum of $3,000 was annually appropriated for the salary of the consul at Tangier from the time the salary was first fixed at that sum until the year 1882. See appropriations as follows:

| | | | | |
|---|---|---|---|---|
| 1857, February 7, | 11 | Statutes-at-Large, | | 160. |
| 1858, June 5, | " | " | " | 311. |
| 1859, March 3, | " | " | " | 403. |
| 1860, May 26, | 12 | " | " | 20. |
| 1861, February 28, | " | " | " | 171. |
| 1862, July 11, | " | " | " | 336. |
| 1863, February 4, | " | " | " | 639. |
| 1864, June 20, | 13 | " | " | 138. |
| 1865, January 24, | " | " | " | 423. |
| 1866, July 25, | 14 | " | " | 225. |
| 1867, February 28, | " | " | " | 414. |
| 1868, March 30, | 15 | " | " | 57. |
| 1869, March 3, | " | " | " | 320 |
| 1870, July 11, | 16 | " | " | 220. |
| 1871, February 21, | " | " | " | 418. |
| 1872, May 22, | 17 | " | " | 143. |
| 1873, February 22, | " | " | " | 472. |
| 1874, June 11, | 18 | " | " | 68. |
| 1875, February 18, | " | " | " | 322. |
| 1876, August 15, | 19 | " | " | 171. |
| 1877, February 26, | " | " | " | 234. |
| 1878, June 4, | 20 | " | " | 93. |
| 1879, January 27, | " | " | " | 269. |
| 1880, May 14, | 21 | " | " | 135. |
| 1881, February 24, | " | " | " | 341. |

In the act making appropriations for the consular and diplomatic service for the fiscal year ending June 30, 1875, it is provided:

"The following consulates shall be divided into seven classes, to be known respectively as classes one, two,

three, four, five, six, and seven, and the consuls at such consulates shall be entitled to compensation for their services per annum at the rates respectively specified herein, to wit:

"Class one, four thousand dollars.
"Class two, three thousand five hundred dollars.
"Class three, three thousand dollars.
"Class four, two thousand five hundred dollars.
"Class five, two thousand dollars.
"Class six, one thousand five hundred dollars.
"Class seven, one thousand dollars.

* * * * * *

"CLASS III.

"Barbary States.—Tripoli, Tunis, Tangiers."
18 Stat. L. 66, 68.

In the act making appropriations for the consular and diplomatic service for the fiscal year ending June 30, 1879, it is provided: "That the following sums be, and the same are hereby, appropriated for the service of the fiscal year ending June 30, 1879, out of any money in the Treasury not otherwise appropriated, for the objects hereinafter expressed, namely: * * * "For salaries of consuls, vice-consuls, commercial agents, and thirteen consular clerks, three hundred and four thousand six hundred dollars, namely:" * * * "Class III.—At $3,000 per annum." * * * "Barbary States.—Tripoli; Tunis; Tangier." * * * "And the salaries provided in this act for the officers within named, respectively, shall be in full for the annual salaries thereof from and after the 1st day of July, 1878; and all laws and parts of laws in conflict with the provisions of this act are hereby repealed." 20 Stat. L. 91, 93, 98. Similar provisions were in the diplomatic and consular appropriation act for the fiscal year ending June 30, 1880. 20 Stat. L. 267, 269, 274. A like sum was appropriated

for the fiscal years ending June 30, 1881, and June 30, 1882; but the appropriation acts for those years did not repeat the declaration contained in the acts for the fiscal years of 1879 and 1880, to the effect that "the salaries provided in this act for the officers within named, respectively, shall be in full for the annual salaries thereof," &c. 21 Stat. L. 133, 135, 339, 341.

In the diplomatic and consular appropriation act of July 1, 1882, certain sums were appropriated "for the service of the fiscal year ending June 30, 1883, out of any money in the Treasury not otherwise appropriated, for the objects therein expressed," one of them being "for salaries of consuls, vice-consuls, commercial agents, and thirteen consular clerks, three hundred and thirty-two thousand one hundred dollars, namely:" * * * "Class V.—At two thousand dollars per annum. * * * Barbary States.—Tangier." 22 Stat. L. 128, 129, 131. For each of the fiscal years ending June 30, 1884, June 30, 1885, and June 30, 1886, the appropriation for the consul at Tangier was $2,000, and in the same language as that employed in reference to that officer in the act for the fiscal year ending June 30, 1883. 22 Stat. L. 424, 426; 23 Stat. L. 227, 230, 322, 326. For the fiscal year ending June 30, 1887, the appropriation was also $2,000 a year, but the opening clause of the act declared that the sums therein severally appropriated were to be "in full compensation for the diplomatic and consular service of the fiscal year." 24 Stat. L. 108, 112.

In the consular and diplomatic appropriation bill of 1884, the Committee on Appropriations in the House of Representatives reported the following paragraphs as a part of the bill:

"That after June 30, 1884, consuls-general and consuls appointed to the ports and places hereinafter named,

shall be entitled to annual salaries respectively, of such amount to each as Congress may annually appropriate; and the President may substitute a commercial agent or a consul-general for any consul at any port or place named in Schedule B or C, and pay the appropriated salary of any such consul to such substitute; and hereafter, said schedules, and the appropriations for the payment of consuls-general and consuls, shall read as follows:"

Here followed the particular appropriations for the several consulates, &c., and at the close thereof was the following paragraph:

"And the foregoing several appropriations for salaries of consuls-general and consuls named above in Schedules B and C, shall be hereafter the annual salaries of said consuls-general and consuls respectively, and after June 30, 1884, no consul or consul-general shall be entitled to or allowed any part of any salary appropriated for payment of a secretary or second secretary of legation or interpreter, and all acts or parts of acts inconsistent or in conflict therewith, or that authorize any greater amount of salary to any consul-general or consul, or any compensation for acting as secretary of legation or interpreter, shall be, and are hereby repealed." Congressional Record, 48th Cong. 1st Sess. part 4, pp. 4185, 4194, 4195; part 5, pp. 4953, 4956.

These paragraphs were in the bill as passed by the House of Representatives, but were omitted from the act as finally passed.

The claimant was paid at the rate of $3,000 a year, up to and including June 30, 1882, and for the balance of his term at the rate only of $2,000 a year. He brought this suit to recover the difference between those amounts for the period from June 30, 1882, to June 30, 1886. His claim was rejected in the court below, and judgment was rendered in favor of the United States.

## II.

### Assignment of Error.

The appellant hereby assigns the following error in the judgment of the Court of Claims:

That said court held that the lawful salary of the consul of the United States at Tangier, in the Barbary States, from June 30, 1882, to June 30, 1886, was two thousand dollars ($2,000) a year only, and dismissed the petition of the claimant which claimed salary at the rate of three thousand dollars ($3,000) a year; whereas said court should have held that the lawful salary of such consul during said period was three thousand dollars ($3,000) a year, and should have rendered judgment in the claimant's favor for the difference between said two rates of salary, amounting for the period of four years to four thousand dollars ($4,000).

## III.

### BRIEF.

It would seem difficult for human ingenuity to suggest a distinction between this case and that of *United States* v. *Langston*, 118 U. S. 389. In that case it was held, page 394, "that, according to the settled rules of interpretation, a statute fixing the annual salary of a public officer at a named sum, without limitation as to time, should not be deemed abrogated or suspended by subsequent enactments which merely appropriated a less amount for the salary of that officer for particular fiscal years, and which contained no words that expressly, or by clear implication, modified or repealed the previous law." This decision was made with reference to the salary of a minister resident and

consul-general to Hayti, for whose salary insufficient appropriations were made in the very same consular and diplomatic appropriation acts which appropriated only $2,000 for the salary of the consul at Tangier. The decision of the Court of Claims in this case, when read in connection with the decision of this court in the Langston case, amounts to this,—that one construction is to be given to these acts with respect to the diplomatic service, and another one as to the consular service. The acts in question are held to be mere appropriation acts for the diplomatic service, while, as to the consular service, they have the combined purpose and effect of an appropriation act, and a salary law fixing the salary at the amount appropriated. This, too, when there is not a word in any of these acts to show any intention of Congress to make a difference between the diplomatic and the consular service,—not a word fixing the salaries at the amounts appropriated, or providing that those amounts shall be "in full compensation."

This remarkable result is reached by attributing to the words "Class V," occurring at the head of the paragraphs appropriating $2,000 for the consul at Tangier, the effect of reducing the salary to the amount appropriated.

It will be observed that the four appropriation acts now under consideration contain no definition of the words "Class V," nor do the words themselves convey any meaning to the mind. The several paragraphs of the acts make complete sense without these words. Grammatically considered, they form no part of any sentence in the acts, and are not capable of being parsed or construed in connection with any of the enacting language. The effective words of appropriation are "At two thousand dollars per annum," just similar language to that used in appropriating in the same acts for the minister to Hayti, and which

this court, in *United States* v. *Langston*, 118 U. S. 389, held to be ineffective to reduce the salary of that officer to the amount appropriated.

But the court below holds that this language was a *re-enactment* of so much of the act of 1874 as divided the consulates into seven classes, though a *repeal* of so much as declared that all the consuls named in the act should "be entitled to compensation for their services per annum at the rates respectively *specified herein*, to wit," and placed the consul at Tangier among those entitled to $3,000.

We think a consideration of the division of the consulates into classes in the act of 1874 will show conclusively that the Court of Claims has mistaken its true meaning. It was adopted merely as a method of *fixing the pay* of the consuls. No difference in duties whatever is prescribed for consuls of each class, and, in point of fact, there is no difference in the duties. The classification is only another mode of fixing the salaries at the amounts stated in the act of 1874, under the name of each class respectively.

Mr. Eugene Schuyler, in his work on American Diplomacy, published in 1886, says, relative to the attempts made in the early history of the Government to create fixed salaries for consular officers, page 45: "There was another similar attempt in 1833, but nothing was done in this way until the law of 1856, by which our consular system is still in the main regulated, although various changes of minor importance have been made since that time." And with reference to the act of 1874, now under consideration, he says, page 46: "Since then, by the law of 1874, the salaried consulates have been arranged in seven classes, according to the amount of salary, from $4,000 to $1,000, but so long as there is no fixed rule of promotion from one grade to another this classification is meaningless.

It in no way corresponds to the importance of the posts."

So, too, the Secretary of State, in an official report to Congress, in 1884, said: "Since 1856 there have been several enactments which have had special application to consular duties and powers, but the system has remained substantially the same as that fixed by the law of 1856." House Ex. Doc. No. 121, 48th Cong. 1st Sess. p. 3.

Looking at the substance rather than the form of these acts, it is apparent that the arrangement of classes in the act of 1874 was a mere method of *fixing the salaries* of the consular service. And it is equally apparent that the similar arrangement in the appropriation acts of 1882 and the subsequent years was merely a form adopted for the purpose of *appropriating* the several amounts therein stated.

How entirely these titles at the heads of paragraphs like this "Class V" are regarded as mere means of convenient reference is shown by the fact that they are frequently not carried into the act as enrolled and published in the Statutes-at-Large. Thus, in 1886, the Army Appropriation Bill being under discussion in the House in Committee of the Whole, a motion was made to strike out the words, "Pay of the Staff Corps," at the head of one of the paragraphs. But the Chairman said: "The Chair desires to state this is a mere head-line for the provisions following. It is not transferred to the act which is published in the Statutes-at-Large, and will not appear as a part of the law. It is not transferred to the law as printed, and would be omitted by the enrolling clerks." Congressional Record, 49th Cong. 1st Sess. part 4, p. 4299.

It thus appears that this heading to the paragraph, "Class V" might, without violating the practice of the House, have been omitted by the enrolling clerks. If, as this court has declared in *Hadden* v. *The Collector*, 5 Wall. 107, the title of an *entire act* has but little weight in its construction,

how much less should be the effect given to mere *sub-headings of paragraphs* within the act. And yet it is upon such meagre and insufficient indications as these that the Court of Claims bases its far-fetched theory of a partial re-enactment and partial repeal of the scheme of consular salaries established and re-established by the acts of 1856, 1874, 1878, and 1879.

The effect of these acts of 1878 and 1879 has been declared by this court in the following language:

"On the other hand it is not probable that Congress, knowing, as we must presume it did, that that officer had, in virtue of a statute—whose object was to fix his salary—received annually a salary of $7,500 from the date of the creation of his office, and after expressly declaring in the act of 1878, 20 Stat. 91, 98, that he should receive that salary from and after July 1, 1878, and again in 1879, that he should receive the same amount from and after July 1, 1879, should, at a subsequent date, make a permanent reduction of his salary without indicating its purpose to do so, either by express words of repeal, or by such provisions as would compel the courts to say that harmony between the old and the new statute was impossible."

*United States* v. *Langston*, 118 U. S. 389, 394.

Congress has in many instances, both before and after the act of 1874, changed the salaries of consuls and the places of their consulates, but always by some special provisions to that effect, either in the appropriation act or in some separate enactment. For examples of such changes previous to 1874, see 12 Stat. L. 171, 336; 13 Stat. L. 139; 14 Stat. L. 225, 414; 15 Stat. L. 57, 322; 17 Stat. L. 120, 282, 473; and, since 1874, 18 Stat. L. 285, 486; 19 Stat. L. 4; 20 Stat. L. 24. In no instance does Congress seem to have supposed that a simple appropriation of less than the amount of salary fixed by previous law of itself operated to reduce the salary.

These acts of 1882, 1883, 1884, and 1885, nowhere show on their face that they were intended to repeal existing laws fixing consular salaries, and any member of either House might have read them through from end to end without once suspecting that any existing salary was changed. If laws are to be repealed, let it be done openly and directly, so as to show the intention on the face of the repealing act, not in this indirect—we might almost say surreptitious—manner.

The course of action of the two Houses in 1884, when the Senate refused to concur with the House in making the salaries appropriated by the Consular and Diplomatic Appropriation Bill of that year the full annual salaries of the officers from and after the ensuing 1st of July, as set forth in our opening statement (*supra*), is significant and is entitled to great weight in determining the meaning of the law. *Blake* v. *National Banks*, 23 Wall. 307.

The action of the Senate, taken in connection with that of the House, is susceptible of but one interpretation. The House was willing to appropriate no more than the several specific sums named in the bill, and expressed in the strongest possible manner by its action the desire that the officers affected by the bill should accept those sums as compensation in full for their services during the fiscal year, and that their salaries should, for that year at least, be fixed at and limited to the sums thus appropriated. The Senate, on the other hand, by its action in striking out the clause fixing the salaries at the amounts appropriated, with equal clearness expressed its unwillingness to change, in this appropriation bill, the existing permanent laws fixing the salaries; and, intending to pass it in accordance with the requirements of existing law, was willing to give any aggrieved party the right to pursue such remedies as he might have in Congress or the courts, in case anything

had been accidentally omitted, or any appropriation should chance to be insufficient to meet the exigencies of existing law. It was not a mere omission to repeal or modify existing laws. It was something stronger. It was a positive refusal to do so. And unless this court is prepared to hold that the House of Representatives, alone and without the concurrence of the Senate, possesses the right to repeal existing acts of Congress by failure to supply the necessary appropriations, then the failure, or even the positive refusal of that House to supply such appropriations, could not, in the least degree, even to the extent of a temporary reduction, affect the salary of this consulate.

A law which establishes the amount of a continuing salary is not changed by another law which simply makes an appropriation for its payment. The purpose of the two enactments is widely different. The one creates a liability, the other undertakes to discharge it. Part payment does not discharge the whole obligation. If the amount of salaries is to be ascertained by the amount of the appropriation, why have salary laws at all? No salary can be paid until an appropriation is made therefor, and if the appropriation always determines the amount, the salary laws are worse than useless. They are a delusion and a snare.

Of course the appropriation act may, by appropriate language, change or repeal the salary act; but in that case both purposes are combined in the one enactment—a combination, however, which Congress, by standing rules, endeavors to avoid.

Congress undoubtedly has power to provide that the sum appropriated shall be received in full satisfaction of accruing salary; but if no such intention is expressed, and none can be inferred from the language employed, the courts cannot supply the omission. They must decide the law as

Congress has chosen to leave it. *United States* v. *Langston*, 118 U. S. 389.

That Congress understood the effect of a simple appropriation upon a fixed and continuing salary in the same way that this court has recently declared it, is apparent from their legislative acts in declaring the salaries appropriated in 1878 and 1879 to be the annual salaries of the several offices, and in *refusing* to make a similar declaration in 1884.

It is to be remembered that at the time the appellant accepted the office for the salary of which he is now suing, that salary was fixed at three thousand dollars ($3,000). His appointment and commission were, by law, to remain in force during the pleasure of the President. By the recent decision of this court in *Edwards* v. *United States*, 103 U. S. 471, he was not at liberty to resign this office at pleasure, but was compelled by law to serve in it until another should be appointed and accept the office, or until his own resignation should be accepted by the President. It is certainly no answer to this to say that if his resignation had been offered it would, perhaps, have been accepted, and that another might have been found to accept the position at the reduced salary offered. *Non constat*, that even under these circumstances the President would have accepted his resignation if tendered. While, therefore, we do not claim that Congress is without power to reduce the salary of an officer during the term of the existing incumbent by laws prospective in their character, we do decidedly maintain that it is inequitable that such officers should be deprived of their compensation unless by a clear, positive, and unequivocal repeal of the law under which they accepted their offices.

It has been the almost universal and unbroken practice of the government to fix the salaries of all its officers, es-

pecially the higher and more important ones, by laws of a general and permanent character. Perhaps hardly an instance can be found on our statute books where an office has been created without a fixed salary or emoluments being attached to it, except where it was intended that the office should be held without pay. In few, if any, instances has an office been established to depend upon annual appropriations solely for its support. Of no branch of the public service is this more true than of the consular and diplomatic service. Congress, by the act of March 1st, 1855, 10 Stat. L. 619, remodeled the consular and diplomatic system, as it again did by act of August 18, 1856, 11 Stat. L. 52. From this time forward the consular and diplomatic system was changed only in regard to particular offices, the general plan of the system remaining as fixed by the act of 1856. Title 18, Revised Statutes of the United States, entitled "Diplomatic and Consular Officers," is only a re-enactment of the act of 1856, with such additions and modifications as had been made in particular parts of the system by the intermediate legislation.

Some changes have been made since, and Congress, in 1874, 1878, and 1879, thought fit to revise the salaries of the several officers of the service and to enact that the salaries fixed by the appropriation acts of those years should continue to be the annual salaries for the future. The provisions of the acts of 1874, 1878 and 1879 in this particular have been studiously omitted from the subsequent consular and diplomatic appropriation acts passed by Congress, an omission of which the courts cannot fail to take notice, and which must have its reason. The acts since 1879 must be considered as mere appropriation acts, authorizing the application of certain moneys in the Treasury not otherwise appropriated, to the specific purposes named in the several acts, and having no other or

further purpose or effect, and expressing no ulterior intention on the part of Congress, and so they have already once been construed by this court. *United States* v. *Langston*, 118 U. S. 389.

The case of *Mahoney* v. *United States*, 10 Wall. 62, presents an instructive contrast to the case at bar. Mahoney was consul at Algiers, and claimed salary at the rate of $4,000 a year, under an act passed while Algiers belonged to one of the Barbary powers, giving a salary of $4,000 to the consul at that place. Subsequent to the passage of the act fixing the salary at $4,000, the country had been conquered by France, and Algiers had become a French colony. The important diplomatic and judicial functions devolved upon the consul in a Mohammedan country, and which had been in the contemplation of Congress when it fixed the salary at $4,000, had thus become extinct, and the duties of the consul had become reduced to the ordinary commercial duties required of those officers in countries under the jurisdiction of a Christian nation. Under these circumstances, and in consideration that Congress had omitted the consulate at Algiers entirely from the list of salaried consuls in the act of 1856, the law giving $4,000 was held to be no longer applicable, and the claimant in that case was held to be entitled to nothing but the fees collected by him in his office.

The present case presents the direct reverse of the Mahoney case. Since 1810 this country has never been without a consul at Tangier, nor was that officer at any time from 1856 onwards paid any other or less salary than $3,000, until 1882. Meanwhile Tangier has constantly remained and still is within the jurisdiction of the Emperor of Morocco, and is in the Barbary States; and the consul at that place has for nearly a century exercised and still does exercise all the diplomatic and judicial functions with which

such officers are clothed in Mohammedan countries, and which are recognized by section 4127 of the Revised Statutes of the United States, and are specially provided for in the treaties of 1787 and 1836, between the United States and the Emperor of Morocco. Public Treaties of the United States (1875), 516, 521. No reason under heaven can be suggested for the reduction of this salary from $3,000 to $2,000; and while the constitutional power of Congress so to reduce it out of a desire to economize, or even from sheer caprice, is not denied, such an intention is hardly to be presumed in the absence of circumstances imperatively requiring such a construction of these acts.

Appellant admits that by the provisions of the consular and diplomatic appropriation act for the year ending June 30, 1887, 24 Stat. L. 108, 112, his salary from and after the 1st of July, 1886, was effectually reduced to $2,000 a year by the introduction of the words "in full compensation" into the enacting clause of the act, and makes no claim for salary from and after that date. *United States* v. *Fisher*, 109 U. S. 143. This departure, *ex industria*, from the language of former consular and diplomatic appropriation acts, only serves to set in stronger light the justice of the claim for difference of salary up to that time, earned during a period in which the appropriation was unaccompanied by any such limitation.

For these reasons it is submitted that the judgment of the Court of Claims should be reversed, and the cause remanded with directions to render a judgment in favor of the claimant for the difference of salary between $3,000 and $2,000 a year for the fiscal years ending respectively, June 30, 1883, 1884, 1885, and 1886, amounting to $4,000.

Respectfully submitted.

GEORGE A. KING,
*Attorney for Appellant.*

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OCT 17 1887
JAMES H. MCKENNEY
CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1887.

FELIX A. MATTHEWS, APPELLANT,
vs.
THE UNITED STATES, APPELLEE. } No. 959.

## BRIEF FOR APPELLEE.

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OCTOBER TERM, 1887.

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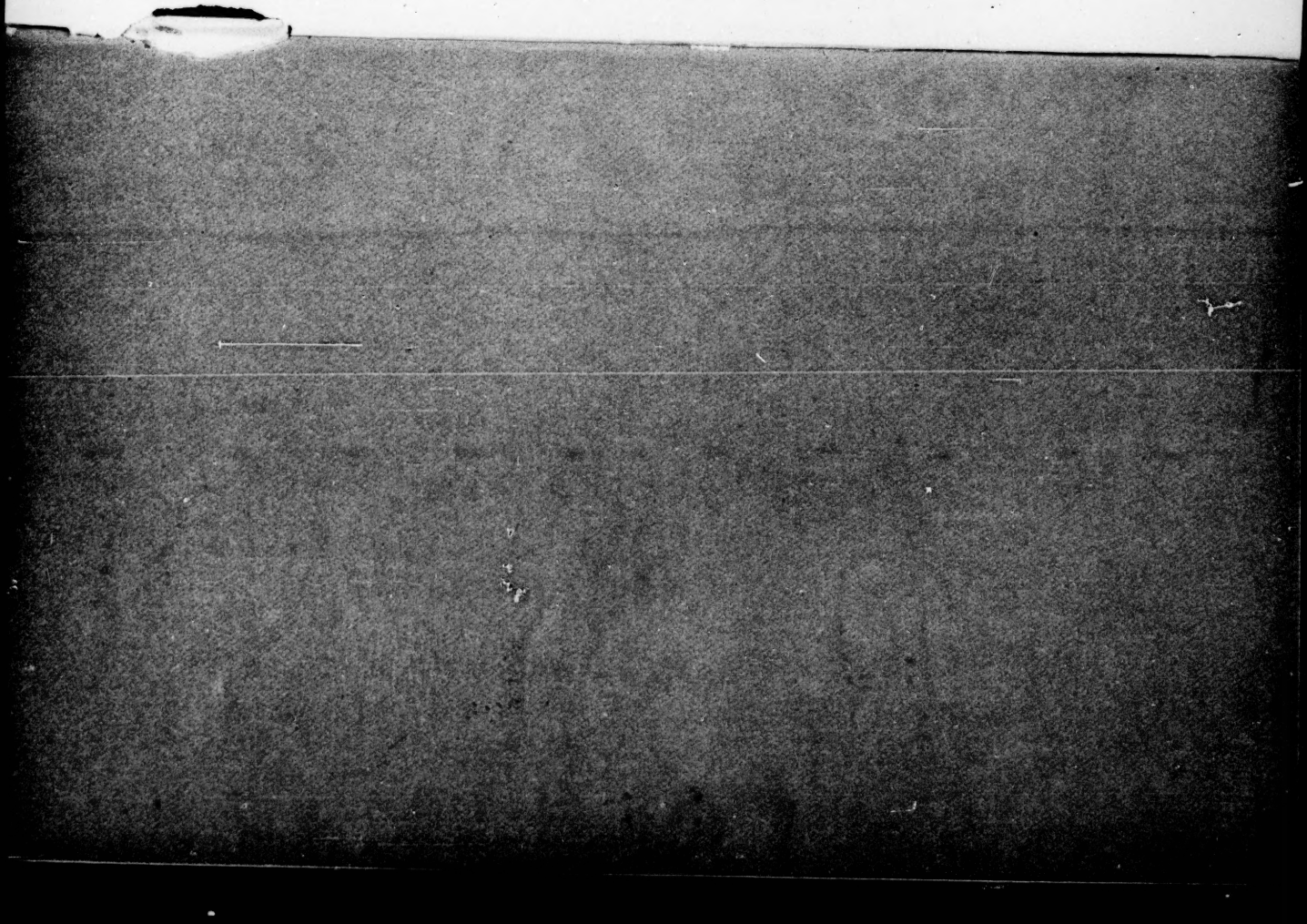
**BRIEF FOR APPELLEE.**



# In the Supreme Court of the United States

OCTOBER TERM, 1887.

FELIX A. MATTHEWS, APPELLANT,
*vs.*
THE UNITED STATES, APPELLEE. } No. 959.

## BRIEF FOR APPELLEE.

The claimant was consul of the United States at Tangier, in the Barbary States, from July 1, 1882, to June 30, 1886. He was paid during this period an annual salary of $2,000. In this suit he seeks to recover an additional $1,000 per annum for the period mentioned, maintaining that his salary during the same was fixed by law at $3,000 per annum.

The court below, holding that the salary fixed by law from July 1, 1882, to June 30, 1886, for his office was only $2,000 per annum, entered judgment for the defendants' and the case is here upon claimant's appeal from that judgment.

We maintain that the judgment appealed from was clearly right and should be affirmed.

The act of June 11, 1874 (18 Stats. at Large, 66–68), provided as follows:

> The following consulates shall be divided into seven classes, to be known respectively as classes one, two, three, four, five, six, and seven, and the consuls at such consulates shall be entitled to compensation for their services per annum at the rates respectively specified herein, to wit:
>
> Class one, four thousand dollars.
> Class two, three thousand five hundred dollars.
> Class three, three thousand dollars.
> Class four, two thousand five hundred dollars.
> Class five, two thousand dollars.
> Class six, one thousand five hundred dollars.
> Class seven, one thousand dollars.
>
> * * * * * * *
>
> CLASS III.
>
> Barbary States: Tripoli, Tunis, Tangiers.

This act classified consulates, fixed the salaries of the several classes, and attached the Tangier consulate to the third class By attaching the Tangier consulate to the third class Congress fixed the salary of the office at $3,000 per annum. The classification determined the amount of salary, and the legislative purpose on June 11, 1874, to fix the salary of the Tangier consulate at $3,000 per annum was clearly and solely expressed by attaching it to the third class.

In the consular and diplomatic appropriation act of July 1, 1882 (22 Stats. at Large, pp. 128, 129, and 131) it is provided:

> That the following sums be and are hereby appropriated for the service of the fiscal year ending June

30, 1883, out of any money in the Treasury not otherwise appropriated for the objects hereinafter expressed, namely:

* * * * * * *

For salaries of consuls, vice consuls, commercial agents, and thirteen consular clerks, $332,000, namely: * * * Class V, at $2,000 per annum:

* * * * * * *

Barbary States, Tangier * * *

These provisions leave the act of June 11, 1874, intact so far as that act divides consulates into seven classes and fixes the respective salaries of these classes, but certainly repeals so much of that act as attached the Tangier consulate to the third class. This repeal is express by the provision which omits that consulate from the third class and attaches it to the fifth class.

Certainly, since the classification was solely according to the rate of compensation, Congress could have had no purpose in putting this office in the fifth class but that of fixing its salary at $2,000 per annum.

Under the legislative scheme for arranging salaries then and now in force, the detaching of the Tangier Consulate from the third class and attachment of it to the fifth class was not only the appropriate but the sole way for Congress to express the legislative purpose of reducing the salary of its incumbent to $2,000 per annum.

The succeeding appropriation acts covering the period embraced in claimant's suit continued to omit the Tangier consulate from the third class and to attach it to the fifth class. We need not discuss them further.